

GOVERNMENT OF ANDHRA PRADESH

A B S T R A C T

Tribal Welfare – Khammam District – Revision Petition filed by Sri Kopparapu China Venkateswarlu S/o Murthaiah under Sec.6 of A.P.S.A.L.T.R,1959 against the orders of Agent to Government, Khammam in CMA No.34/1985, dt.7-4-1986 –Allowed – Orders – Issued.

SOCIAL WELFARE (LTR - 2) DEPARTMENT

G.O.Ms.No. 46

Dated:22-5-2009

Read the following:-

1. From Sri Kopparapu China Venkateswarlu S/o Murthaiah
Khammam Dist. Revision Petition, Dt: 21/05/1986.
2. Govt.Memo.No.223/F2/1986-6, Dt:18-2-1988.
3. From the HC of AP order in W.A. No.558/86, dt.22-6-1992.
4. From the HC of AP WP No.16057/1996, dated 9-8-2007.
5. From the Collector, Khammam, Lr.Rc.F2/2101/86 (CMA/34/85),
Dt:20/11/2008
6. Govt.Memo.No.7858/LTR-2/2006, Dt:.17-11-2008.

ORDER:

In the reference first read above, Sri Kopparapu China Venkateswarlu S/o Murthaiah R/o Paloncha Khammam District, has filed Revision Petition before the Government under Sec.6 of A.P.S.A.L.T.R,1959 against the orders of Agent to Government Khammam in CMA No.34/85, dt. 7.4.1986 in respect of land situated in Sy.No.1/7 to an extent of. Acs.1.22 ½ cts. in Lakshmidivipalli village of Khammam District. The main grounds of the Revision Petition are as hereunder---

1. Petitioner herein is the Managing Director of a Stone Crushing Unit "Sri Venkateswara Stone Crushing Unit" at Lakshmidivipalli village of Paloncha Mandal. One Kummarikuntla Peda Saidulu purchased an extent of Ac. 4.00 in Sy.No.1/7 of Lakshmidivipalli village of erstwhile Kothagudem taluk, now in Paloncha Revenue Mandal from Sri Talapanuru Peraiah under a registered sale deed dated 16.4.1968. Neither the petitioner nor the vendor belongs to ST communities and all of them are non-tribals.
2. Sri Kummarikuntla Peda Saidulu sold an extent of Ac.1.22½ gts to the petitioner under sale agreement dated 15.12.1969 on a stamped paper for a sale consideration of Rs.4,500/- and by virtue of this sale agreement, the petitioner herein was kept in possession and had set up a small scale industry by name Sri Venkateswara Stone Crushing Industry/Unit in the said land.
3. Special Deputy Collector(TW) Paloncha in his Rc.No.144/85/Kgm, dated 11.1.1985 desired the petitioner to appear before him along with relevant documents pertaining to the land in question in which a Stone Crushing Unit was established within 24 hours from the time of receipt of notice. This notice was purported to have been issued in exercise of powers conferred upon him under AP Scheduled Areas Land Transfer Regulation 1/59. The petitioner herein produced all the relevant documents and thereafter a notice was given on 14.6.1985 in case No.10/85/Kgm directing to present before Special Deputy Collector (TW) Paloncha on 17.6.1985 and again on 10.7.1985. It was on 10.7.85, when the petitioner appeared, the Special Deputy Collector (TW) stated that he would enquire into the matter and deliver necessary judgement. Thereafter, the Special Deputy Collector (TW) Paloncha in case No.10/85/Kgm rendered judgement dated 5.8.1985 and by this order, the petitioner was sought to be evicted from the land in question to an extent of Ac.1.22 ½ cts and there was direction to restore the possession to the original pattedar Talapanooru Peraiah. In fact, Talapanooru Peraiah was never a claimant.

4. At this stage, the petitioner filed a Writ Petition No.9272 of 1985 and obtained interim direction for not to be dispossessed.
5. The Agent to Government, Khammam ought to have seen that the land in question was covered by a sale deed obtained from the original pattedar by the third respondent in the year 1968 under registered sale deed. In view of this the original pattedar ceased to be the owner having any title or possession over the land in question as early as in 1968. Therefore, directing the land to be restored for a man who ceases to be the owner in the year 1968 is absolutely opposed to the concept of protection that was sought to be provided to the tribals under the Regulation I of 1959.
6. Even under the prohibition contemplated under Sec.3 of the APSALTR 1959, it is only the transferor that is entitled to be restored with the possession of the land which has become the subject matter of void transaction hit by Sec.3 of Regulation 1/59. Transferor means immediate transferor but not any other person. Here, in the instant case even it is presumed that the transfer is hit under Sec.3 of I of 1959 as amended by 1/70, it is only the third respondent i.e. immediate transferor entitled to get restoration of land in question but not the original pattedar and therefore the respondents herein i.e. Agent to Government and Special Deputy Collector (TW) Paloncha have misconceived law under misapprehension of facts and, therefore, the entire proceedings are vitiated.
7. There has been no evidence to show that the transaction took place subsequent to 3.2.1970. The presumption drawn with reference to the entries that were made in the year 1973-74 is absolutely irrelevant and irrational and, therefore, it is liable to be treated as perverse.
8. The finding that the transaction questioned was an ante-dated as held by the Special Deputy Collector(TW) and refused to be interfered with by the Agent to Government is absolutely a perverse order since it was not based upon any material record.
9. The entries in column No.16 of Revenue record did not have effect of annulling the effect of the transaction that took place between the petitioner herein and the 3rd respondent i.e. vendor. The agreement is a proof and the agreement is of the year 1969 prior to 3.2.1970 and by way of part-performance the petitioner herein was put in possession and in pursuant to this possession and enjoyment the petitioner proceeded to construct an industrial unit in it and he has been enjoying all these years and the vendor never contended that this was made subsequent to 3.2.1970. In the absence of positive evidence that the transaction took place after 3.2.1970 and in the absence of the non-availability of the presumption in favour of a tribal, the finding of the SDC (TW) is absolutely perverse and liable to be set aside.
10. The entries in pahanies in column No.16 of the year 1973-74 are misconstrued and misread for the purpose of the case and, therefore, the finding rendered by the second respondent i.e. Special Deputy Collector(TW) was subjected to illegality.
11. The Agent to Governmnet, Khammam having allowed the appeal in respect of the claim made by the 3rd respondent i.e. vendor, ought not to have permitted the order of Special Deputy Collector (TW) in respect of the petitioner herein to continue to be in force and by parity of some reasoning the order against the present petitioner also might to have been set aside by the Agent. Thus, the finding of the Agent to Govt. Khammam was contrary to law and, therefore, it is liable to be set aside and it is vitiated by being discriminatory also.

2. The brief history of the case is that the Special Deputy Collector (TW) Paloncha initiated LTR proceedings against the petitioner herein in case No.10/85/Kgm and held in its order dated 5.8.1985 that the land measuring Acs.4.00 in Sy.No.1/7 of Lakshmiddevipalli (v) of Kothagudem Taluk was

purchased by one Kummarikuntla Peda Saidulu through registered sale deed dt.16.4.1968 from its pattedar Sri Talapanooru Peraiah. Subsequently, K.Saidulu sold an extent of Ac.1.22½ gts to the petitioner Kopparapu China Venkateswarlu under an unregistered sale agreement dated 15.12.1969 for a sale consideration of Rs.4,500/-, but names of petitioner and his vendor were shown in the pahanies from 1973-74 to 1981-82. Hence, ordered ejectment of both petitioner and his vendor Sri K.Saidulu from the said land and restore the same to original pattedar Sri Talapanooru Peraiah.

3. Aggrieved by the order of Special Deputy Collector (TW), the petitioner herein and his vendor Kummarikuntla Peda Saidulu filed an Appeal before the Agent to Government, Khammam and it was held in CMA No.34/85 dated 7.4.1986 that the sale was executed with ante-date, petitioner's name was inserted from 1973-74 with different ink in col.16 and confirmed ejectment of petitioner from the extent of 1.22 ½ acres and restore to original pattedar but set aside ejectment of his vendor Sri K.Saidulu from the remaining extent as he purchased the same through registered sale deed on 16.4.1968 from original pattedar Sri Talapanooru Peraiah (non-tribal) was valid as per LTR 1/70 came into force w.e.f. 3.2.1970. Aggrieved by the orders of Agent to Government, Khammam filed Revision Petition before the Government.

4. In the reference 2nd read above, the Revision Petition was rejected as there are no reason to interfere with the orders of Agent to Government Khammam.

5. In the reference 3rd and 4th read above, the Hon'ble High Court of AP while disposing the WA No.558/1986, dt.22-6-1992 in WP No.5608/1986 granted statusquo pending disposal of the Revision Petition. Further, the Hon'ble High Court in its order dt.9-8-2007 allowed WP No.16057/1996, and remitted the matter to Government with a direction to the Government to dispose of the Revision Petition filed by Sri Kopparapu Chinna Venkateswarlu.

6. In the reference 5th read above, the Collector, Khammam furnished the records.. After examination of the parawise remarks and case records, notices were sent to the concerned to attend the hearing of the revision petition on 29-11-2008 vide reference 6th read above. Both petitioner and his counsel were present. Counsel prayed time for submission of written arguments the Written arguments filed on 3.12.008.

7. The petitioner in his written arguments mainly urged that ----

- a) Talapanuru Peraiah was the pattedar of the land measuring Acs.4.00 in Sy.No.1/7 of Lakshmidvipalli village. He sold the said land under registered sale deed dated 16.4.1968 in favour of one Kummarikuntla Pedda Saidulu and delivered possession to him on even date. Both the Vendor and Vendee are non-tribals and hence the transfer of the land is valid under Regulation 1 of 1959. The purchaser Kummarikuntla Pedda Saidulu in his turn sold a part of the land measuring Acs.1.22½ out of the total extent purchased by him in favour of the petitioner herein under a stamped agreement of sale dated 15.12.1969 and put the purchaser in possession of the said land on the same date after receiving the full consideration amount. Both the Vendor and Vendee are non-tribals and hence the transfer of land by delivery of possession on 15.12.1969 is valid as the transfer had taken place on 15.12.1969. There was an express recital that the vendor agreed to execute a registered document as and when the vendee calls upon him to do so. It was further stated that the expenses towards stamp duty, registration charges shall be borne out by the purchaser himself only.
- b) Before the petitioner herein could seek registration of the sale deed, the Regulation 1 of 1959 was amended by Regulation 1 of 1970 which came into force on 3.2.1970 and this prohibited transfer of land even by a non-tribal to non-tribal on or after 3.2.1970. The Supreme Court held in the case

reported in AIR 1996 SC 224 that Regulation 1 of 1970 is only prospective and any transfers which have taken place between non-tribals prior to 3.2.1970 are perfectly valid and not contravening any provision of law.

- c) The expression 'transfer' was defined as including a contract between the parties. Every agreement between parties is a contract if made by the parties with free consent and for a lawful consideration as per the provisions of Contract Act 1872. Hence, the agreement of sale executed between the non-tribals with free will and consent and for a lawful consideration is a contract where-under immovable property was transferred by one non-tribal in favour of another non-tribal before the Amendment Regulation I of 1970 came into force on 3.2.1970. By the time the purchaser intended to obtain a registered document from the Vendor, the Regulation I of 1970 came into force and hence he could not obtain any registered document even though the vendor was ready and willing to execute a registered document at any time but could not do so now by virtue of the Regulation I of 1970 which substituted Sec.3 of the Regulation 1 of 1959.
- d) The facts are that a non-tribal transferred the land measuring Acs.1.22½ in Sy.No.1/7 situated in Lakshmidivipalli village in favour of a non-tribal on 15.12.1969 and executed an agreement of sale on stamp paper on the same date in his favour before the Regulation I of 1970 came into force. The petitioner herein obtained certified copy of the pahani for S.No.1/7 for the years 1969-70 onwards and it discloses the name of the petitioner in column 16 for an extent of Ac.1.22½. The certified copy also shows an endorsement of the MRO Paloncha that there are no interpolations or over writings or by struck off in the original pahani and this was certified by the MRO Paloncha on 17.5.1987. Hence, this certified copy and the Land Revenue Receipt establishes that the petitioner was in possession of the land during 1969-70 and corroborates the stamped agreement dated 15.12.1969.
- e) Both the Vendor and the Vendee Pedda Saidulu and Kopparapu China Venkateswarlu filed an appeal before the Agent to Government and the Vendor had categorically stated that he sold a part of the land measuring Acs.1.22 ½ to the 1st Appellant i.e. K.China Venkateswarlu and claimed only the balance extent Acs.2.17½. This admission of Pedda Saidulu is against his own interest and hence admissible in law. The Agent to Government had agreed that 2nd appellant i.e. Pedda Saidulu is entitled to the extent of Acs. 2.17½ out of the total extent of Acs.4.00 purchased by him under the registered sale deed dt. 16.4.1968 and that there is no contravention in so far as he is concerned for Ac.2.17½ cts. The Agent to Government. rejected the claim of the 1st appellant i.e. K.China Venkateswarlu only on the ground that the agreement of sale is not registered and agreed with the Special Deputy Collector and rejected the appeal of the 1st petitioner without examining the evidence on records.
- f) Further any agreement of sale executed after 24.9.2001 is required to be registered compulsorily by virtue of the Registration and other Related Laws (Amendment) Act 2001 which came into force on 24.9.2001. In the instant case, the agreement was executed on 15.12.1969 long before the Amendment Act came into force and hence the agreement is valid though not registered. The fact that the petitioner was put in possession on the date of the agreement is corroborated by the Land Revenue Receipt paid by him for the year 1969-70 and also his name finds place as the person in possession and enjoyment of the land in Col.No.16 of the Pahani Patrika from 1969-70 onwards without any corrections or alterations as can be seen from the certified copies issued by the Mandal Revenue Officer, Paloncha.
- g) Further, the Hon'ble High Court in a Full Bench of Three Judges held in the case reported in 1981 (2) ALT 239 FB at page 263 that Regulation I of 1970 is prospective only and that the validity or otherwise of the transfers made prior to Sec.3 (1) or its amendments by Regulation II of 1963 or Regulation I of 1970 coming into force, cannot be adjudicated upon under Sec.3 (2) of

the Regulation and the same has to be challenged in an appropriate forum constituted for deciding disputes relating to immovable property situated in scheduled areas. In view of his authoritative pronouncement by three learned Judges after considering several Single and Double Bench Judgements of the High Court. The same view was followed by a single Judge in a recent case reported in 1999 (6) ALT at page 174 wherein the learned Judge held that even if transfers were made under unregistered sale deeds, authorities under the Regulation have no power to go into the validity of such transfers.

- h) Notwithstanding the above legal decision of the Hon'ble High Court, the Special Deputy Collector (TW) Paloncha passed orders of ejectment on 5.8.1985 in his case No.10/85/KGM holding that the transfer of land by the stamped agreement dated 15.12.1969 is ante-dated and that the land revenue receipt issued by the Patwari are not relevant and that the pahanies contain interpolations, over-writings in different ink and that they never got their names mutated in the revenue accounts. On appeal, the Agent to Government allowed the appeal in so far as Pedda Saidulu is concerned as he got the land transferred under a registered sale deed dated 16.4.1968 and confirmed the order of ejectment passed against the petitioner herein on the ground that the transfer is only under an agreement of sale dated 15.12.1969 which is ante-dated and dismissed the appeal of the petitioner on 7.4.1986 and committed the same mistake as was committed by the primary authority.
- i) It is pertinent to repeat that the stamped agreement dated 15.12.1969 is corroborated by the certified copy of Pahani Patrik of 1969-70 issued by the MRO Paloncha and the Land Revenue Receipt for 1969-70 issued by the Patwari. Further as stated above, the Authorities under Regulation 1 of 1959 have no jurisdiction to adjudicate the validity or otherwise of the unregistered sale deeds executed prior to 3.2.1970 as held by the Hon'ble High Court referred to above.
- j) In view of the above facts and legal principles enunciated by the Hon'ble High Court, the order of the Agent to Govt at Khammam passed in CMA No.34/85 dated 7.4.1986 in so far as the petitioner's case is concerned, is illegal and it is liable to be set aside. It is to be made clear that the said order dated 7.4.1986 in so far as Pedda Saidulu is concerned, the order of the Agent to Government, Khammam stands as that part of the order is not the subject matter of this Revision Petition. Hence, the Revision Petition is to be allowed to the extent mentioned above and the order of the Special Deputy Collector (TW) Paloncha in case No.10/85/KGM dated 5.8.1985 is liable to be set aside into to.

8. Government after careful examination of the case records of lower, grounds urged by the petitioner in the RP, further written arguments and other material available on record observed that ----

1. The primary authority i.e. Special Deputy Collector (TW) Paloncha in his order in case No.10/85/KGM dt. 5.8.1985 held that – as per registered document No.171, dt. 16.4.1968, an extent of 4.00 acres in Sy.No.1/7 at Lakshmidevipalli, a scheduled village of erstwhile Kothagudem taluk was sold by original pattedar Talapanooru Peraiah and Talapanooru Brahmaiah to Kummarikuntla Peda Saidulu, that as per second sale agreement dated 15.12.1969 executed on a three rupee stamp, Kummarikuntla Peda Saidulu S/o Veeraiah sold an extent of Ac.1.22½ in favour of respondent Kopparapu China Venkateswarlu out of the extent purchased through the above registered document and that all the three persons i.e. Talapanooru Peraiah - the original pattedar, Kummarikuntla Peda Saidulu, the first purchaser and Kopparapu China Venkateswarlu, the second purchaser are non-tribals.
2. On perusal of pahani extracts for 1960-61, 1967-68, 1972-73, 1973-74, 1975-76, 1976-77, 1977-79-80 to 1982-83 Talapanooru Peraiah was shown as pattedar while name of Kummarikuntla Peda Saidulu appeared for the

first time in the pahani of 1972-73 though he purchased the land through registered document on 16.4.1968 and became legal owner and possessor of the extent of Acs.4.00 w.e.f. 16.4.1968 only, but due to non-entry in the pahani patrik by the revenue authorities, the name of original pattedar i.e. Talapanuru Peraiah was remained as pattedar till 1982-83. The finding of the lower and appellate authorities that the names of Kummarikuntla Peda Saidulu and Kopparapu China Venkateswarlu were found in pahanies only from 1973-74 to 1982-83 and that too with difference of ink, difference of hand writing and over-writings noticed, do not carry any weight of evidence in the light of the certification made by the Mandal Revenue Officer, Paloncha (under whose custody the basic revenue records i.e. pahanies are maintained) that "no interpolations or over-writings or struck-off made in the original pahanies" and that the names of petitioner herein found in occupation Col.No.16 from the year 1969-70 to the extent of Ac.1.22½ by which it could substantiate that in pursuance of the sale agreement dated 15.12.1969 and physical possession on the even date only, the name of the revision petitioner find place in the pahani from the year 1969-70 i.e. much prior to the regulation 1 of 1970 came into force w.e.f. 3.2.1970 and as also the LR receipts from 1969-70 to 1972-73 corroborate. The Agent to Government, Khammam in the Appeal agreed that the 2nd appellant i.e. Kummarikuntla Pedda Saidulu was entitled to the extent of Acs.2.17½ out of the total extent of Ac.4.00 purchased by him through the registered sale deed dated 16.4.1968 and that there was no contravention in so far as he is concerned for Ac.2.17½ cts but rejected the claim of the revision petitioner only on the ground that the agreement of sale was not registered without examining the available secondary corroborative and substantive evidences. Clinchingly the primary evidence i.e. sale agreement dated 15.12.1969 has corroborative secondary evidence of pahani patrikas for the crucial period of Regulation I of 1970 came into force and proved the petitioner in physical possession of the land much prior to the regulation 1 of 1970 through an agreement of sale dated 15.12.1969 though it is unregistered and becomes compulsory w.e.f. 24.9.2001 by virtue of the Amended Act 2001 of the Registration and other Related Laws.

9. Therefore, Government hereby set aside the orders of the Agent to Government, Khammam in CMA No.34/85 dated 7.4.1986 as far as the revision petitioner is concerned to the extent of Ac.1.22½ cts. in Sy.No.1/7 at Lakshmidvipalli village of Paloncha Mandal, and allowed the Revision Petition accordingly.

10. The counsel for the petitioner is requested to inform his clients accordingly. The Collector, Khammam / Addl. Agent to Government and Project Officer, I.T.D.A., Bhadrachalam are requested to take necessary action in the matter.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

A.K.TIGIDI,

Prl. SECRETARY TO GOVERNMENT

To

The Collector, Khammam District.

The Addl. Agent to Government & Project Officer, ITDA,
Bhadrachalam, Khammam.

The Spl.Dy.Collector,(TW) Bhadrachalam, Khammam District.
(With RPAD for the following records)

LTR Case file No.10/85/KGM containing pages CF(122)

Sri Kopparapu China Venkateswarlu S/o Murthaiah

R/o Laxmidvipalli vg. Paloncha Taluk, Khammam Dist.

Sri Ku8mmarikuntla Peda Saidu S/o Veeraiah

R/o Paloncha, Khammam Dist.

Copy to the P.S. to M (TW& RIAD)

FORWARDED:BY ORDER

SECTION OFFICER